

REMARKS

The above amendments and these remarks are responsive to the Office Action issued on September 2, 2005. By this response, claim 20 is newly presented. No new matter is added. Claims 1-20 are now active for examination.

The Office Action

The Office Action dated September 2, 2005 rejected claims 1, 2, 4-6 and 13-15 under 35 U.S.C. §102(b) as being anticipated by Mattes et al. (US Publication No. 2004/0153217). Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mattes et al. in view of Fujita (US Patent No. 5,485,892). Claims 7-12 and 16-19 were objected to for depending on a rejected base claim, but would be allowable if they are rewritten into independent form.

Applicants noted that Mattes was published on August 5, 2004, which was later than the filing date of this application (November 19, 2003). Accordingly, Mattes does not qualify as an effective reference under 35 U.S.C. §102(b), which requires that a qualifying document be published more than one year prior to the filing date of an application. It is believed that the Examiner intended to reject claims 1, 2, 4-6 and 13-15 under 35 U.S.C. §102(e), rather than under 35 U.S.C. §102(b) as indicated in the Office Action.

Applicants respectfully submit that the rejections are overcome and the objection is addressed in view of the amendments and remarks presented herein.

The Anticipation Rejection of Claims 1, 2, 4-6 and 13-15 Is Overcome

Claims 1, 2, 4-6 and 13-15 were rejected as being anticipated by Mattes. The anticipation rejection is respectfully overcome because Mattes cannot support a prima facie case of anticipation.

Claim 1 describes a driving assistance system for a vehicle comprising a state recognition device that detects a vehicle condition and a traveling environment of a subject vehicle. A future state prediction device predicts future driving conditions. The predicting includes calculating at least one of a current degree of proximity to a preceding vehicle and an extent of influence on the subject vehicle due to future changes in surrounding environment. The calculating is based on detection results of the state recognition device. The driving system also comprises a risk potential calculating device that calculates risk potential around the subject vehicle based on (1) the future driving conditions predicted by the future state prediction device and (2) a driver's intentions. Examples of the predicted future driving conditions include a possible future change of speed of a preceding vehicle, which may reduce or increase the risk potential around the subject vehicle.

In order to make out a case of anticipation under 35 U.S.C. §102, the allegedly anticipating prior art must identically disclose each and every element of the claimed invention within a single prior art reference. It is respectfully submitted that the prior art identified by the Examiner fails to identically disclose each and every element of the claimed invention, and therefore the claims patentably define over the prior art.

Mattes relates to a collision avoidance method and system that calculate a collision probability based on various parameters, such as a distance or a relative speed between the own vehicle and a preceding vehicle, the azimuth angle of a preceding vehicle relative to the straight-

ahead direction of the own vehicle, the lateral offset of a preceding vehicle relative to the own vehicle, and/or a speed or a steering angle of the own vehicle. Apparently, Mattes merely calculates collision probability (purportedly comparable to the risk potential described in claim 1) based on present information or parameters of the vehicle. However, Mattes does not make any prediction as to the future condition or changes. The reference does not describe, nor imply or suggest, any prediction of the future state or future driving conditions. There is no detection or calculation of an extent of influence on the host vehicle (or subject vehicle) due to future changes in the surrounding environment. Accordingly, Mattes does not predict future driving conditions, and determine collision probability or risk potential based on future driving conditions, as described in claim 1.

Furthermore, claim 1 specifically describes that risk potential is calculated based on **both** (1) the future driving conditions and (2) a driver's intentions. However, Mattes' disclosure is **silent** on determining a driver's intentions, let alone calculating the collision probability based on both (1) the future driving conditions and (2) a driver's intentions, as described in claim 1.

Since Mattes fails to disclose every limitation of claim 1, Mattes cannot support a prima facie case of anticipation. The anticipation rejection is untenable and should be withdrawn. Favorable reconsideration of claim 1 is respectfully requested.

Like claim 1, independent claims 13-15 also include features related to predicting future driving conditions, and calculating risk potential around the subject vehicle based on both (1) the predicted future driving conditions and (2) a driver's intentions. As discussed earlier relative to claim 1, these features are unavailable in Mattes. Accordingly, claims 13-15 also are patentable over Mattes for at least the same reasons as for claim 1. Favorable reconsideration of claims 13-15 is respectfully requested.

Claims 2, 4-6 and 16-19 depend on claims 1 and 15, respectively, and incorporate every limitation thereof. Consequently, claims 2, 4-6 and 16-19 also are patentable over Mattes by virtue of their respective dependencies, as well as based on their own merits. Favorable reconsideration of claims 2, 4-6 and 16-19 is respectfully requested.

The Obviousness Rejection Is Overcome

Claim 3 indirectly depends on claim 1 and was rejected as being unpatentable over Mattes in view of Fujita. The obviousness rejection is respectfully traversed because Mattes and Fujita cannot support a prima facie case of obviousness.

As discussed earlier, Mattes fails to disclose every limitation of claim 1, the features of which are incorporated into claim 3. Fujita was cited by the Office Action for its purported adjustment of reaction force applied to an accelerator pedal or a steering wheel to change the operation of a vehicle. However, Fujita does not alleviate the deficiencies of Mattes. Accordingly, Mattes and Fujita, even if combined, do not disclose every limitation of claim 3. Favorable reconsideration and withdrawal of the obviousness rejection of claim 3 are respectfully solicited.

The Objection to Claims 7-12 and 16-19 Is Addressed

Claims 7-12 and 16-19, directly or indirectly, depend on claims 1 and 15, respectively, and were objected to for depending on a rejected base claim.

As discussed earlier, claims 1 and 15 are patentable over the publications of record. It is believed that claims 7-12 and 16-19 are in appropriate form.

New Claim 20 Is Patentable

By this Response, claim 20 is newly added and dependent from claim 1. As discussed earlier, claim 1 is patentable over the publications of record. Accordingly, claim 20 also is patentable over the documents of record by virtue of its dependency from claim 1, as well as based on its own merit. Favorable consideration of claim 20 is respectfully requested.

Acknowledgement of Prior Art Is Respectfully Requested

The Office Action indicated that JP 59-152157, a document submitted by an information disclosure statement dated May 23, 2005, was not considered because that document was not in English and the information disclosure statement did not include a statement of relevance for JP 59-152157.

By this response, a document satisfying the requirement of a statement of relevance for JP 59-152157 is attached. It is respectfully requested that JP 59-152157 be specifically considered and a new PTO-1449 form with Examiner's initial be issued.

CONCLUSION

For the reasons given above, Applicants believe that this application is in condition for allowance, and request that the Examiner give the application favorable reconsideration and permit it to issue as a patent. If the Examiner believes that the application can be put in even better condition for allowance, the Examiner is invited to contact Applicants' representatives listed below.

Serial No.: 10/715,483

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to **Deposit Account 500417** and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink that reads "Wei-Chen Chen". The signature is fluid and cursive, with the first name "Wei-Chen" and the last name "Chen" clearly distinguishable.

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